

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT

NORTHERN DIVISION

--oOo--

MIGUEL ORTEGA, and BENJAMIN)
ORTEGA,)

Plaintiffs,)

vs.)

CITY OF OAKLAND, et al.,)

Defendants.)

**CERTIFIED
COPY**

No. C 07-02659 JCS (ADR)

DEPOSITION OF GENESIS PRECIADO

OAKLAND, CALIFORNIA

THURSDAY, MAY 15, 2008

REPORTED BY:

INGRID SKOROBOHATY

CSR NO. 11669

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1 IN THE UNITED STATES DISTRICT COURT

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4 MIGUEL ORTEGA, and BENJAMIN)
ORTEGA,)

5 Plaintiffs,)

6 vs.)

No. C 07-02659 JCS (ADR)

7 CITY OF OAKLAND, et al.,)

8 Defendants.)

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13 Deposition of GENESIS PRECIADO, taken on
14 behalf of the defendants, at 1901 Harrison
15 Street, 11th Floor, Oakland, California
16 94612, beginning at 5:25 p.m. and ending
17 at 7:25 p.m., on Thursday, May 15, 2008,
18 before Ingrid Skorobohaty, CSR No. 11669.
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23
24
25

1 APPEARANCES:

2
3 FOR THE PLAINTIFFS:

4
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10
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17
18 FOR DEFENDANT CITY OF OAKLAND:

19 OAKLAND CITY ATTORNEY'S OFFICE
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22 Oakland, California 94612
23 (510) 238-3601

24 ALSO PRESENT: Irene Tenney, M.A.,
25 Spanish Interpreter

1 Benjamin was walking back with the flag toward you; is
2 that right?

3 A. Well, we seen 'em parked previously.

4 Q. Where did you see 'em parked?

5 A. In the same spot.

6 Q. And when you say "previously," what point did
7 you see them before you saw them at this time?

8 A. I don't remember the time or what was I doing,
9 but what I could say is that I remember we was all back
10 in the corner, and then we seen a police officer come in
11 the parking lot and park, but then we wasn't doing
12 anything wrong -- that was the reason why we stayed and
13 "hey, hey" -- because if we were, we would have got our
14 attention called immediately, which we didn't.

15 Q. So as Benjamin was walking back across the
16 street toward you with the flag and you saw the officers
17 in the parking lot --

18 A. Yes.

19 Q. -- that was the second time you saw those same
20 officers in the parking lot?

21 A. No. I was facing the street, and there was --
22 I guess it was still parked back here. It's common
23 sense they were still parked. And when he was halfway
24 across the street, that's when the police officers rode
25 onto the street.

1 A. Yes. It was going in the wrong direction.

2 Q. Did Benjamin just keep walking across the
3 street?

4 A. Yeah. He kept walking across the street.

5 Q. Was the light still green for him?

6 A. Yeah. He still had the walking man.

7 Q. Did the officers -- did the officers say
8 anything after they had stopped at the intersection?

9 A. Well, they stopped, and then they -- I seen
10 the car was here, and Benjamin was still here, and the
11 officers, both of them, observed him, as he walked right
12 in front, and they waited till he passed a little bit by
13 them, and then that's when the officer said, "Put that
14 flag away now, before we shove it up your ass."

15 Q. So you heard the officer say -- you heard the
16 officer say that?

17 A. Yeah, I heard him.

18 Q. And you said the officer said that just after
19 Benjamin had passed their car, coming toward you?

20 A. Yeah, because he even looked back to see who
21 was talking to him.

22 Q. So Benjamin looked back after you heard the
23 police officers say what they said?

24 A. Yeah, because we never had in mind they was
25 going to say anything. He was crossing the street,

1 holding the Mexican flag. There wasn't nothing wrong.

2 Q. Did Benjamin stop and look back?

3 A. No. He kept walking, kept walking. He was
4 just looking back.

5 Q. You said there were two officers in the car?

6 A. Yeah, two officers.

7 Q. Do you know which of the two officers, the
8 driver or the passenger said --

9 A. The driver.

10 Q. After Benjamin looked back, did he stop, or
11 did he keep walking to the corner where you were?

12 A. No. He kept walking.

13 Q. Did Benjamin say anything in response?

14 A. No. He stayed quiet and kept walking.

15 Q. Did anyone say anything in response to the
16 officers?

17 A. His brother Miguel.

18 Q. What did Miguel say?

19 A. He said -- he said, "Be quiet, you fat ass."

20 Q. Did the officer say anything in response to
21 that?

22 A. He did, but I don't remember the words.

23 Q. Can you estimate how far away from the
24 officers you were when you heard him say what he said?

25 A. No. I was still at the corner. They was in

1 back to that parking lot that you guys left the corner,
2 that they yelled, "Get off the corner," and then you
3 guys left?

4 A. Like, they told us, and in our heads we was,
5 like, Why? Why? It was, "Just get off the corner." It
6 happened, like, fairly quickly.

7 Q. And then you said you -- everybody in the
8 group walked back to where the Suburban was?

9 A. Yeah.

10 Q. When you guys walked back to where the
11 Suburban was, did some of the people go into the yard?

12 A. No, not at the time. We all -- we all went
13 back to where the Suburban was at. The Suburban was
14 parked on the opposite side from where the property was.

15 Q. And at some point did people actually walk
16 into the yard? Did some of the people go into the yard?

17 A. No.

18 Q. Where was Benjamin when you guys -- when you
19 guys came back and stood around the Suburban, was
20 Benjamin part of that group?

21 A. Yeah.

22 Q. Was Miguel part of that group?

23 A. Miguel?

24 Q. Yes.

25 A. Yeah. Yeah.

1 made the officer come in and violently attack Benjamin.

2 Q. What did Miguel say?

3 A. Well, it started with Alcantar. He said, "Why
4 are you inside the house? Are you holding your mom's
5 hand? You cry baby" -- or "baby," or something.

6 Then he said -- I don't remember what was his
7 response -- if he said "yes" or "no," but the point is
8 that Benjamin then said, "That's because -- maybe
9 because our mom likes us." That made Alcantar come in.

10 Q. And when Alcantar came in, what did he do?

11 A. He came in, and he just brutally attacked
12 Benjamin.

13 Q. I want to talk about what you call this
14 attack.

15 So when Alcantar comes into the yard, does he
16 go straight at Benjamin?

17 A. Straight at Benjamin, because Benjamin wasn't
18 even on the steps. He was -- like, he was standing
19 before the first step, so they were, like, in the close
20 range.

21 Q. How far -- can you estimate how far it is from
22 the gate to where Benjamin was standing inside the yard?

23 A. No, but it's not far. It's like a quick two,
24 three steps.

25 Q. Three steps?

1 himself. That's when Alcantar hit him with the elbow,
2 and then he grabbed -- he had full possession of him,
3 and he dropped him to the floor, flipped him on his
4 back. Alcantar had his knee on Benjamin's back, grabbed
5 Benjamin's arm, and then he was just ready to get
6 handcuffed, but before he got handcuffed, Alcantar told
7 him, "Say sorry. You want me to break your hand, little
8 boy? Say sorry."

9 He said, "All right. I'm sorry." And at
10 first Benjamin said "sorry."

11 Then he said, "Say sorry again."

12 Benjamin started crying because it was -- you
13 know, it's just a little snap and his wrist breaks, so
14 then he was saying, "Sorry. All right. I'm sorry."

15 He said, "Say 'sorry, sir.'"

16 He said, "Sorry, sir."

17 Once he said "Tell me sorry," he'll say it.
18 "Sorry, sir," he said, "Sorry, sir." So then he just --
19 he let go, got him handcuffed.

20 Q. So the first -- I guess the first thing that
21 happened is Alcantar -- and I want to get this right.
22 The first thing that happened is that Alcantar throws an
23 elbow. Is that the very first thing that Alcantar does?

24 A. Yeah.

25 Q. And you motioned -- he threw his right elbow

1 that he threw, did that make contact with Benjamin?

2 A. Yeah. He hit him, which left him a big mark
3 on his neck.

4 Q. And you saw this, right?

5 A. Yeah, I saw it.

6 Q. Where did Alcantar's elbow hit Benjamin?

7 A. It hit him right in his neck, on the side of
8 his neck.

9 Q. You're pointing to the right side of your
10 neck. Which side of the neck did it hit Benjamin? Did
11 it hit him on the right side of the neck?

12 A. It hit him on the left side, because he threw
13 his right elbow, so he hit him on his left side. They
14 was facing each other.

15 Q. And like you described, that's as Benjamin is
16 also trying to move to his right, trying to avoid it.
17 Is that how --

18 A. What was that?

19 Q. Alcantar's right elbow makes contact with the
20 left side of Benjamin's neck, and that's even though
21 Benjamin is trying to get out of the way; is that right?

22 A. Oh, no. Like -- like, he moved, and he got
23 caught. Like, he moved, and he had time to pause. Then
24 he got caught.

25 Did you understand?

1 his thing." Like, "Don't go in." So then he came out,
2 and then, since the officers had their Tasers out, they
3 crowded him up, and then they grabbed him, and then they
4 put the Taser to the back of his head, which made Miguel
5 just -- you know, just, like, "Okay. Fine. Arrest me."

6 Q. How did they grab Miguel?

7 A. I don't remember, but it was more than two
8 officers that grabbed him.

9 Q. Was Miguel still on the porch when he got
10 grabbed, or had he gotten down to the yard, if you
11 remember?

12 A. I don't remember where he was actually
13 standing when he got grabbed.

14 Q. Did -- after both Miguel and Benjamin were on
15 the ground, did you see -- well, strike that.

16 Were you able to recognize any of the officers
17 that took Miguel down?

18 A. No. No. I don't know who it was.

19 Q. Can you describe either of them or any of them
20 that took Miguel down?

21 A. Because at the moment Alcantar had Benjamin,
22 and again, I don't know. We was pushed back, like, "Get
23 back," and, "All right. Fine."

24 Q. I don't have too much more, but if you want to
25 take a break -- this isn't an endurance contest, so if

1 Q. He had a scrape?

2 A. He had a scrape which turned fat.

3 Q. Did it turn fat right away, or did it turn fat
4 the next day?

5 A. They was in there for a while, in the cop car
6 they was in there for a long time. It didn't inflate as
7 soon as it was touched, you know, but over the course of
8 time they were in there, because he came back inflated,
9 and I took pictures of his neck and both of his wrists.

10 Q. So by the time he got out of the car, the
11 thing on his neck was raised?

12 A. Yeah.

13 Q. Did he have any other bruises?

14 A. I don't remember, but he was hurt.

15 Q. Did he tell you he was hurt?

16 A. Yeah. He was hurt, and his eyes were still
17 watering, because I remember his brother made fun of
18 him, like, "Stop crying. We didn't do anything wrong."

19 Q. Were there any cuts on his face? on his lips?
20 Anything like that?

21 A. I don't remember.

22 Q. Any blood anywhere?

23 A. I don't remember about the blood.

24 Q. Where was this raised mark on Benjamin?

25 A. On the same side he got elbowed.

1 Q. You said that you took some photographs.

2 A. Yeah.

3 Q. When did you take those?

4 A. The moment he got back, because he had gave me
5 his camera right before he got attacked.

6 Q. Who did? Benjamin did?

7 A. Yeah.

8 Q. So it was Benjamin's camera?

9 A. Yeah.

10 Q. So how much time passed between Benjamin
11 coming back to the yard, getting out of the police car,
12 and the time you took the pictures?

13 A. I don't remember. It was a long time.

14 Q. It was a long time?

15 A. Yeah.

16 You said how much time was it from when he
17 came back from the car that I took the pictures?

18 Q. Yeah.

19 A. Oh, okay. It was, like, once he came in,
20 there was other people saying, "Take a picture. Take a
21 picture."

22 Q. How many pictures did you take? Do you
23 remember?

24 A. No, I don't remember how many pictures.

25 Q. Did you take more than five?

1 parents?

2 A. Well, I talked to them when they was, like--
3 because initially Miguel and Benjamin told 'em what
4 happened, and then -- because we go to the same church,
5 so when we ran into them, they was, like, "Benjamin told
6 me what happened, and that they were pushing you guys
7 back," and this and that, and I was, like, "Yeah, yeah,
8 yeah."

9 Q. And when you had this conversation at church,
10 Miguel and Benjamin were there too?

11 A. No. It was just his mom. It was just his
12 mom.

13 Q. Other than that, you haven't had any
14 conversations with Miguel or Benjamin, just you guys?

15 A. Oh, no.

16 Q. I only have a couple more questions.

17 At all times, like, from the moment you guys
18 started -- from the first time you saw those officers on
19 May the 7th, 2006 to the time they left the house on
20 May 7, 2006, did you ever hear any of those officers say
21 anything about Miguel or Benjamin's race or ethnicity?

22 A. Did I hear?

23 Q. Did you ever hear the officers say anything
24 about it?

25 A. Well, they didn't say anything about their

1 ethnicity, like, "You dumb Latino" or anything, but they
2 said, "We're going to call Immigration. I hope all you
3 guys have your green cards."

4 Q. Besides that, did they say anything about race
5 or ethnicity?

6 A. I don't remember, and I don't want to say
7 anything that I don't remember.

8 MR. HIGA: Like I told you, "I don't remember"
9 is a perfectly acceptable answer.

10 We've marked five documents as Exhibits 1, 2,
11 3, 4, and 5 to your deposition, and I'm just going to
12 put 'em out in front of you from left to right, and on
13 the left is 1, and all the way at the right is No. 5,
14 and I just want to make sure of a couple things about
15 these, okay? So why don't you go ahead and take a look
16 at them. They're black-and-white photocopies of -- what
17 are those? -- 4-by-6-inch pictures.

18 MR. VOSE: I think so.

19 MR. HIGA: And once you've had a chance to
20 take a look at 1, 2, 3, 4, and 5, just look up, and I'll
21 understand that you've had the opportunity.

22 MR. JACOBSEN: Do you have the originals here
23 for him to look at?

24 MR. HIGA: We were looking for them all day
25 today, Steve. Couldn't find 'em. We'll get as far as

1 we can with these questions.

2 Q. Have you had a chance to take a look at them?

3 A. Yeah.

4 Q. Number 1, all the way on your left here, do
5 you recognize this photograph?

6 A. Yeah.

7 Q. What is this a photograph of?

8 A. Benjamin's neck.

9 Q. Did you take this photograph?

10 A. Yeah, I took this photograph.

11 Q. Is this one of the photographs you took, as
12 you testified, after the --

13 A. Yeah, after.

14 Q. After this happened?

15 A. Yeah.

16 Q. How about No. 2?

17 A. This, I think, is a closer snapshot of the
18 neck. No. Yeah. This is a closer shot at the neck.

19 Q. Of Benjamin's neck?

20 A. Yeah.

21 Q. And do you recognize that as a photograph that
22 you took?

23 A. Yeah, I took this picture.

24 Q. And this is a photograph that you took on May
25 the 7th, 2006?

1 A. Yeah, yes.

2 Q. And as you described, in the yard, after
3 Benjamin was released from the police car?

4 A. Yeah, after. All these pictures happened
5 after.

6 Q. Number 3, can you identify what that picture
7 is of?

8 A. Yeah. The marks of the handcuffs.

9 Q. And that's again of Benjamin?

10 A. Yeah, that's Benjamin.

11 Q. And it's, again, a picture you recognize you
12 took?

13 A. Yeah.

14 Q. How about No. 4?

15 A. Number 4, yeah. We just flipped his wrists.

16 Q. So it's the opposite side --

17 A. Yeah.

18 Q. -- of Benjamin's wrists from that which is
19 depicted in Exhibit 3?

20 A. Yeah.

21 Q. And you recognize that as a picture that you
22 took?

23 A. Yes.

24 Q. And that was after Benjamin was released from
25 the police car on the same day?

1 A. Yes.

2 Q. And No. 5, finally, can you -- do you
3 recognize what that's a picture of?

4 MR. JACOBSEN: Don't guess. If you know, tell
5 us.

6 THE WITNESS: No, I don't remember what part
7 of his body that is, but that's on Benjamin.

8 MR. HIGA: Q. You remember taking that
9 picture?

10 A. I don't remember that actual image, but again,
11 I was the one who took the pictures.

12 MR. HIGA: I don't have any further questions.

13 MR. VOSE: I've got a few follow-ups, not that
14 many.

15 MR. HIGA: Thank you.

16 EXAMINATION BY MR. VOSE

17 MR. VOSE: Q. Mr. Preciado, I introduced
18 myself to you earlier. I'm Charles Vose. I'm a lawyer
19 for the City. I represent the City and Sergeant Bernard
20 Ortiz in this matter, and I just have a few follow-up
21 questions that I want to ask you, and I'll try to be as
22 methodical as I can, but they're just minor points on a
23 number of things that you've said.

24 So going back to the beginning of the day on
25 May 7th of 2006, you testified that, after you got up

1 A. Yeah, yes.

2 Q. And as you described, in the yard, after
3 Benjamin was released from the police car?

4 A. Yeah, after. All these pictures happened
5 after.

6 Q. Number 3, can you identify what that picture
7 is of?

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10 A. Yeah, that's Benjamin.

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12 took?

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18 Q. -- of Benjamin's wrists from that which is
19 depicted in Exhibit 3?

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22 took?

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25 the police car on the same day?

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2 Q. And No. 5, finally, can you -- do you
3 recognize what that's a picture of?

4 MR. JACOBSEN: Don't guess. If you know, tell
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6 THE WITNESS: No, I don't remember what part
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20 Ortiz in this matter, and I just have a few follow-up
21 questions that I want to ask you, and I'll try to be as
22 methodical as I can, but they're just minor points on a
23 number of things that you've said.

24 So going back to the beginning of the day on
25 May 7th of 2006, you testified that, after you got up

1 remember how he was grabbed or anything.

2 Q. At some point when this is going on, this
3 altercation between Benjamin and the officer, you said
4 Miguel came out the front door?

5 A. Yeah.

6 Q. Was -- at what point during this incident with
7 Officer Alcantar and Benjamin did Miguel come out the
8 front door?

9 And by that I mean, was he still standing?
10 Was he already on the ground?

11 A. He got hit. That's when he decided to come
12 out.

13 Q. So he got hit with the elbow?

14 A. Yeah. He got hit with the elbow.

15 Q. And then Officer Alcantar is taking him down
16 to the ground?

17 A. Yeah. And that's when --

18 Q. That's when Miguel came out?

19 A. Yeah.

20 Q. And where were you standing when this was all
21 going on?

22 A. I was standing -- he was facing -- I was
23 standing to the right of Benjamin, right behind him.

24 Q. About how far away?

25 A. Like, about 2 feet. I was real close to him.

1 Q. So you could -- I shouldn't assume.

2 Could you hear what Officer Alcantar was
3 saying to Benjamin clearly?

4 A. Yeah.

5 Q. Now, you said that several officers came at
6 Miguel when he came out the door.

7 A. Yeah.

8 Q. Do you remember who any of the officers were
9 that came at Miguel?

10 A. No, I don't remember any of the officers. I
11 don't even remember how they looked.

12 Q. Did you -- during this time when the officers
13 were coming at Miguel, do you remember seeing the other
14 officer, the other officer that was originally in the
15 car with Officer Alcantar?

16 A. Did I see him again?

17 Q. Yeah.

18 A. I really didn't pay attention to him. The one
19 that was really involved was Alcantar.

20 Q. Do you remember what the officer -- the other
21 officer in the car with Alcantar, do you remember what
22 he looked like?

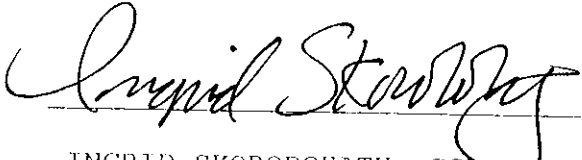
23 A. He was, like, a heavier -- he was a little
24 heavier. Like, he was -- Alcantar was a little more
25 slim than the other officer. I believe his name -- his

1 State of California)
2 County of Alameda)
3

4 I, INGRID SKOROBHATY, hereby certify that the
5 witness in the foregoing deposition was by me duly sworn
6 to testify to the truth, the whole truth and nothing but
7 the truth in the within entitled cause; that said
8 deposition was taken at the time and place herein named;
9 that the deposition is a true record of the witness'
10 testimony as reported to the best of my ability by me, a
11 duly Certified Shorthand Reporter and disinterested
12 person, and was thereafter transcribed under my
13 direction into typewriting by computer; that the witness
14 was given an opportunity to read, correct and sign the
15 deposition.

16 I further certify that I am not interested in
17 the outcome of said action nor connected with nor
18 related to any of the parties in said action nor to
19 their respective counsel.

20 IN WITNESS WHEREOF, I have hereunder
21 subscribed my hand on this 19th day of May 2008.
22

23 
24 _____
25 INGRID SKOROBHATY, CSR NO. 11669